



# Tribunal health and social care recommendations pilot

## Overview

Section 79 of the Children and Families Act 2014 requires the Secretary of State for Education and the Lord Chancellor to carry out a review of how effectively disagreements about the exercise of functions under Part 3 of the Act are being resolved and to present a report on the outcome of the review to Parliament before the end of March 2017.

In order to inform the process, a pilot to extend the jurisdiction of the First-tier Tribunal Special Educational Needs and Disability (the Tribunal) so that it can make non-binding recommendations about health and social care needs and provision in the context of Education Health and Care (EHC) plans, started on the 1 June 2015. The pilot, which will run for at least a year, will take place in the following specified Local Authority areas:

Barking and Dagenham London Borough Council

Bedford Borough Council

Blackpool Council

Cheshire West and Chester Council

Ealing London Borough Council

East Riding of Yorkshire Council

Hackney London Borough Council

Kent County Council

Lambeth London Borough Council

Liverpool City Council

Sandwell Metropolitan Borough Council

Stockport Metropolitan Borough Council

Wokingham Borough Council

## The Regulations

Regulations implemented on the 1<sup>st</sup> April 2015 have enabled the Tribunal, when deciding an appeal against:

- a decision by the local authority not to issue an EHC plan
- a decision by the local authority not to carry out a re-assessment for a child/young person who has an EHC plan
- a decision by the local authority not to amend an EHC plan following a review or re-assessment
- a decision by the local authority to cease to maintain an EHC plan
- the description of the child/young person's special educational needs in an EHC plan
- the special educational provision specified in an EHC plan
- the school or other educational institution named in an EHC plan

to make recommendations that:

- the health care needs specified in the EHC plan are amended
- the social care needs specified in the EHC plan are amended
- health care and/or social care needs are specified in the EHC plan where such needs have not been specified
- health care and/or social care needs are specified when the EHC plan is made
- the health care provision specified in the EHC plan is amended,
- the social care provision specified in the EHC plan is amended,
- health care or social care provision or provision of a particular kind is specified in the EHC plan where such provision has not been specified, or
- health care or social care provision or provision of a particular kind is specified when the EHC plan is made.

The regulations place a duty on the local authority to notify the parents or young person of the Tribunal's powers to make recommendations when determining the appeal at the same time as they notify them of the right of appeal under section 51 of the Children and Families Act 2014 and of the requirement to access mediation information prior to making the appeal.

## The Appeal Process

Two new appeal forms have been developed for use in the pilot areas. These are forms SEND29 (for use by the parent of a child seeking a recommendation) and form SEND29A (for use by a young person seeking a recommendation). The appeal form asks the parent or young person to set out the details of the issues in the appeal and provide as much detail as possible about the changes sought to the plan and asks the parent or young person to specify the wording of the recommendation sought. A copy of form SEND29 is attached as Annex A.

Depending on the nature of the recommendation sought, the local authority will send a copy of the notice of appeal to the health commissioner and/or social care team. The health or social care commissioner will not be made a party to the appeal and must rely on the LA to present its response to the request in evidence to the Tribunal. The LA may seek permission to bring an additional witness to the hearing to give oral evidence about the issue.

If the Tribunal makes a recommendation on health and/or social care, the Tribunal will send a copy of the recommendation or the full decision to the health or social care commissioner as well as to the LA. The regulations require the health or social care provider to respond to the recommendations within 5 weeks or such other time designated by the Tribunal in its order. When the local authority social care team and/or the health commissioner submit their response, they must give reasons for any decision not to follow the recommendation or any part of it.

The Tribunal may decide of its own volition that it is necessary to consider the making of recommendations and in those circumstances will allow both parties (parent/young person and the LA) and the relevant health commissioning body/social care team to respond to the proposal. Usually, such a proposal will be raised well in advance of the final hearing day but in some circumstances, it may be necessary to adjourn the hearing to another day to ensure that all concerned have an opportunity to consider the position carefully and to participate fully in the appeal.

The Tribunal must send the recommendations it makes on health aspects of an EHC plan to the relevant health commissioning body, and recommendations on social care aspects to the responsible local authority. The Tribunal must also send its recommendations to the parent or young person who made the appeal and has discretion to also send the decision on the appeal about educational aspects of the EHC plan to the health commissioning body when it sends the health recommendation, if it considers this would be helpful.

If the Tribunal makes a recommendation in respect of social care provision, the local authority social care team must respond in writing within 5 weeks of the recommendation being made, unless the Tribunal directs otherwise. The local authority must send a copy of its response to the child's parent or young person and to the Tribunal. The response must state what steps if any the local authority has decided to take following its consideration of the recommendation and give reasons for any decision not to follow the recommendations.

If the Tribunal makes recommendations in respect of health care provision, the responsible commissioning body must respond in writing within 5 weeks of the recommendation being made unless the Tribunal directs otherwise and must send a copy of the response to the parents or young person, to the local authority maintaining the EHC plan providing the same information as is required in the social care context.

## **Additional Information**

The Tribunal will take no further action on receipt of the response to the recommendation other than to retain the document for analysis as part of the pilot.

The health care commissioner will not be joined as a party to the appeal, but the pilot local authority will send them a copy of the notice of appeal containing the request and will be permitted to call an additional witness representing the relevant health body or its own social care team if that is considered necessary. If it is considered appropriate, the parents or young person will also be able to request an additional witness to attend the final hearing to address the relevant health or social care issue.

The Tribunal panel considering the appeal will be a three member panel, including an additional member with knowledge and experience of health or social care commissioning matters.

If the response to the recommendation affects the outcome of the appeal either the parents/young person or the local authority can apply to the Tribunal under Rule 48 of the Tribunal Procedure Rules 2008 for a review of the decision on the basis that the circumstances relevant to the decision have changed since the decision was made. An application for a review must be sent to the Tribunal so that it is received within 28 days after the date of the decision notice and if later than 28 days must include a request for an extension of time and the reason why the application was not provided in time. If the application is made within 28 days of the date of the response to the recommendation being received by the party, then the Tribunal is likely to exercise its discretion to extend time for accepting a review application.